

In the Court of Appeals of the State of Alaska

William U Oviok,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13206**

Order

Motion to Supplement

Date of Notice: **5/30/2019**

Trial Court Case No. **3AN-17-07363CR**

Attorney Mark L. Nunn Sr. represents William U. Oviok in this sentencing appeal. Mr. Nunn has filed a new request to supplement the record on appeal in this case. He requests that the Court supplement the record with documents concerning Mr. Oviok's probation conditions in Case No. 2BA-12-00152 CR. Mr. Nunn justifies adding these documents to the appellate record because he referenced them in his sentencing memorandum in the trial court proceedings in this case, and because Mr. Oviok, at the sentencing hearing, testified about his probation conditions from Case 2BA-12-00152 CR. But Mr. Nunn implicitly concedes that the actual documents were not presented to the superior court during the sentencing hearing, and so were not admitted in evidence at that hearing.

As this Court explained in its February 4, 2019 Order (where the Court denied a similar, if not identical, request to supplement the appellate record), if the material was not presented to the superior court, then that material may not be used to challenge the superior court's sentencing decisions in this appeal, or used in this appeal to otherwise seek some relief from this Court. Stated another way, the records from Mr. Oviok's other cases are not relevant to the issues in this appeal unless the superior court actually considered those records when making its decisions. If Mr. Oviok wanted the superior court to consider those records, he was required to make them part of the trial

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court record. As set out in Appellate Rule 210(a), material never presented to the trial court may not be added to the record on appeal. In short, in deciding an appeal, this Court generally may not consider material not provided to the trial court. For this reason, the request to supplement the appellate record with these documents is **DENIED**.

Mr. Nunn also requests this Court supplement the appellate record with documents that he asserts are missing from the trial court record. In particular, he asserts that the arrest warrant in this case, issued December 4, 2018, and the return of that warrant, are missing from the trial court record. But under Appellate Rule 210(i), when there is a discrepancy in the trial court file, the discrepancy must be submitted to and decided by the trial court. For this reason, the request to supplement the appellate record with these documents is **DENIED**. However, if the missing documents are added to the trial court record, then they will be added to the appellate record.

Mr. Nunn also asserts that letters to and from Mr. Oviok and the superior court from April 2019, long after the judgment was issued, should be made part of the appellate record. But Mr. Nunn has not explained how these letters are relevant to any issue on appeal. This Court earlier did allow Mr. Nunn to supplement the record with post-judgment material (see February 4, 2019 Order), but it appeared to the Court that this new matter was related to Mr. Oviok's then active request that he be released on bail pending this appeal. For this reason, the request to supplement the appellate record with post-judgment letters from April 2019 is **DENIED**. (These documents should be made part of the post-judgment *trial court* record, but they are not part of the appellate record in this case.)

Mr. Nunn asserts that evidence regarding Facebook messages that was submitted on a CD to the superior court at the sentencing hearing is not available to this Court. But the Court does have access to that CD, which even though it is not part of the *scanned* version (i.e., the electronic record) of the record, is in fact included in the appellate record. To the extent that Mr. Nunn is asking the Court to supplement the appellate record with the Facebook messages, or with the other files on the CD, that request is **DENIED as moot**.

Finally, Mr. Nunn asserts that the electronic record “stops with a reference to Barrow Probation Officer Peter Acuna’s admission ...”. But it is unclear what Mr. Nunn is referring to. Mr. Nunn does not explain or otherwise identify what documents are actually missing, and where in the record they should appear. If there are pre-judgment documents in the trial court record that were not scanned into the appellate record, then Mr. Nunn should attach those documents to a pleading, and they will be added to the electronic record. If the documents Mr. Nunn is referring to are missing from the trial court record, then Mr. Nunn must follow Appellate Rule 210(i) — that is, this discrepancy in the trial court record must be submitted to and decided by the trial court. That said, as already explained, if the documents are post-judgment, then generally they will not be added to the appellate record. For this reason, the request to supplement the appellate record with additional unidentified documents is **DENIED**.

Entered under the authority of Chief Judge Allard.

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Clerk of the Appellate Courts

A handwritten signature in dark ink, appearing to read "K. Roberts", written over a light blue horizontal line.

Kyle Roberts, Deputy Clerk

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